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## Louis J. Micca, Esq.

September 27, 2012

Beryl Nusbaum, Esq.  
Woods Oviatt Gilman LLP  
700 Crossroads Building  
2 State Street  
Rochester, NY 14614

RE: Roberts v. Los Alamos National Security, LLC. et al.

Dear Beryl,

I am in receipt of Los Alamos' affidavits submitted in response to the Court's discovery order in this matter together with Los Alamos' Response to Plaintiff's Amended Requests for Admission. With respect to the Requests for Admission, Los Alamos' response to Request 9 is non-responsive. Kindly admit or deny that the U of R's regulations existing on the date of the accident (UR 88-231) required principal investigators to complete an OMEGA familiarization before conducting their first experiment.

In an attempt to comply with the Court's Order, Los Alamos submitted the affidavit of Ms. Lovato. Ms Lovato indicates that "a user's primary exchange server account and archived email are reasonably accessible either through a manual search or electronically" and that "the dates of email reasonably accessible range are from at least January 2008 to the present." Ms. Lovato also states that "all email on the exchange server and redundant server is reasonably accessible" and that "the DCS is backed up every hour and the backups are reasonably accessible for up to six weeks."

Los Alamos has not, however, provided the Court with any affidavit stating whether or not Los Alamos has conducted any search of the reasonably accessible data bases to recover numerous email correspondence that Los Alamos has failed to produce in this action. As you know, I was able to identify over 100 emails sent by or to Los Alamos since January 2008, that were produced by other parties but not produced by Los Alamos.

Despite the clear direction of the Court granting Plaintiff motion to compel discovery, Los Alamos has not produced a single additional document in this action and has still not submitted an affidavit indicating that its failure is because the documents are no longer reasonably accessible.

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Should Los Alamos fail to fully comply with the Court's Order dated August 8, 2012, by Friday, October 5<sup>th</sup>, Plaintiff will move the Court for an Order finding Los Alamos in contempt.

Very Truly Yours,



Louis J. Micca

Cc: Hon. Jonathan W. Feldman  
All Counsel (via email)  
Mr. Samuel Roberts